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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 722. 55

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

STATEMENT OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT, AS TO JURISDICTION.

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore, Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 792.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

STATEMENT OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT, AS TO JURISDICTION.

This is an appeal by The United Railways and Electric Company of Baltimore, (hereinafter called the Company), under section 237 (a) of the Judicial Code, (as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, the Act of January 31, 1928, c. 14, 45 Stat. , and the Act of April 26, 1928, c. 440, 45 Stat.), from a final decree of the Court of Appeals of the State of Maryland, a decision in favor of the validity of certain orders, legislative in character, of the Public Service Commission of Maryland (hereinafter called the Commission), and certain Maryland statutes relating to the Commission, in a suit in which the

validity of the orders, and of the statutes (as construed by the Court of Appeals), had been drawn in question on the ground of their being repugnant to the Constitution of the United States [R. 1717]. The orders of the Commission limited rates charged by the Company. These orders of the Commission are "statutes" within the meaning of section 237 (a) of the Judicial Code, as amended. [*Sultan Railway Co. vs. Department of Labor,* 277 U. S. 135; *King Manufacturing Co. vs. Augusta,* 277 U. S. 100; *Oklahoma Gas Co. vs. Russell,* 261 U. S. 290, 292; *Bluefield Co. vs. Public Service Commission,* 262 U. S. 679, 683-684; *Northern Pacific Railway Co. vs. Department of Public Works,* 268 U. S. 39, 42; *Live Oak Association vs. Railroad Commission,* 269 U. S. 354, 356.]

On August 1, 1927, the Company applied to the Commission for an increase in fares (then limited by Commission order to 7½ cents token fare or 8 cents cash) to 10 cents flat. [R. 89.] On February 10, 1928, the Commission passed an order denying the Company's application for a flat 10 cent fare and limiting fares to 8⅓ cents (or 9 cents cash) instead of 7½ cents (or 8 cents cash). [R. 57-59.] On March 13, 1928, the Company filed a bill in equity in the Circuit Court No. 2 of Baltimore City to enjoin the Commission from enforcing the order of February 10, 1928, or prior orders limiting rates, as confiscatory and contrary to the Fourteenth Amendment. [R. 5-12.] On May 11, 1928, the Circuit Court entered a final decree adjudging the Commission rates and orders confiscatory and contrary to the Fourteenth Amendment and enjoining enforcement. [R. 85-86.] On July 16, 1928, the Court of Appeals (*a*) reversed in part the final decree of the Circuit Court (which enjoined enforcement of the Commission's rates and orders), (*b*) affirmed in part the same decree (which dismissed the Company's bill as to another part of the Commission's order of February 10, 1928) and (*c*) remanded the case (through the Circuit Court) to the Commission for further proceedings

in accordance with the opinion of the Court of Appeals. [R. 1622-1653. *Public Service Comm. vs. United Rwys. Co.*, 155 Md. 572; *sub nomine West vs. United Railways and Electric Company*, 142 Atl. 870.]

On November 19, 1928, appeals by both the Company and the Commission from that decree of the Court of Appeals were dismissed for lack of jurisdiction on the ground that the decree of the Court of Appeals was not a final decree. [*United Railways and Electric Company of Baltimore vs. West*, October Term, 1928, No. 464; *West vs. United Railways and Electric Company of Baltimore*, October Term, 1928, No. 465; 278 U. S. , 49 S. Ct. 79.]

On August 31, 1928, the Circuit Court [the lower state court] passed a decree in accordance with the opinion of the Court of Appeals, remanding the case to the Commission with directions. [R. 1680-1681.] On November 28, 1928, the Commission passed an order, amending its order of February 10, 1928, by limiting fares to 8¾ cents (or 10 cents cash) instead of 8⅓ cents (or 9 cents cash). [R. 1695-1697.] On December 12, 1928, the Company filed a supplemental bill in the Circuit Court to enjoin the Commission from enforcing its orders, including the order of February 10, 1928, as amended by the order of November 28, 1928, on the same constitutional grounds specifically set out in both the original bill and the supplemental bill, viz., that the Commission's rates and orders are confiscatory and contrary to the Fourteenth Amendment. [R. 1681-1689.] On January 10, 1929, the Circuit Court, in accordance with the opinion of the Court of Appeals, sustained the Commission's order of February 10, 1928, as amended by its order of November 28, 1928, and dismissed the supplemental bill. [R. 1705-1706.] On March 20, 1929, the Court of Appeals, for the reasons given in its opinion on the first appeal, affirmed the decree of January 10, 1929, dismissing the Company's supplemental bill. [R. 1712-1716.]

In a word, the Company assailed as confiscatory and contrary to the Fourteenth Amendment, and sought to enjoin, (1) by its original bill the Commission's order of February 10, 1928, and the rates thereby fixed and (2) by its supplemental bill the order of February 10, 1928, as amended by the order of November 28, 1928, and the rates thereby fixed. By the final decree of the Circuit Court, dismissing the Company's supplemental bill, and by the final decree of the Court of Appeals affirming this decree of the Circuit Court, the Commission's order of February 10, 1928, as amended by the order of November 28, 1928, is sustained *in toto* and the Company is denied all relief.

The decree of the Court of Appeals sought to be reviewed was passed on March 20, 1929. [R. 1716-1717.] The Company's appeal was applied for and allowed on March 23, 1929. [R. 1717-1718.]

Respectfully submitted,

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